IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 175 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOSHEP SIMON MEKWAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 175 of 1991

MR MJ BUDHBHATTI for MR BM TRIVEDI for Appellant

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 06/07/2004

ORAL JUDGEMENT

Instant appeal filed under Section 374 of the Code of Criminal Procedure, 1973, is directed against judgment

dated March 2, 1991, rendered by the learned Special Judge, Baroda, in Special Case No.9 of 1986, by which the appellant is convicted of the offences punishable under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 161 of the Indian Penal Code and sentenced to suffer R.I. for one year and fine of Rs.1000/-, in default, R.I. for three months.

2. The appellant, at the relevant time, was discharging duties as Assistant Labour Officer at Karjan. In exercise of his powers vested in him, the appellant had issued notices under the Minimum Wages Act and the Rules framed thereunder, to complainant Vinubhai Dhanjibhai Patel and his brothers, who were cultivating their agricultural lands situated at village Bharthan, Taluka : Karjan, District : Baroda, and called upon them to remain present in his Office at 12.00 noon on June 17, 1985 with salary-book and other documents. On receipt of notices, the complainant and his brothers had gone to the office of the appellant. After having a glance at the books brought by the complainant and his brothers, the appellant had asked them to come again to his office on June 24, 1985 stating that the books, which were brought, were required to be checked. Again, on June 24, 1985, the complainant and his brothers had attended the office of the appellant. The complainant and his brothers were informed by the appellant that the books were not maintained in proper order and, therefore, a case was required to be filed against the complainant and his brothers. In view of the stand taken by the appellant, the complainant and his brothers had come out of the office and had a talk amongst themselves, after which, the other three brothers of the complainant had asked the complainant to do needful in the matter. Thereupon, the complainant had gone inside the chamber of the appellant and asked the appellant to find a way out. The appellant had told the complainant that each brother would have to pay Rs.25/-, i.e. in all Rs.100/-, and if the said amount was paid, he would not file case. Thereafter the complainant had come out of the office of the appellant and informed his brothers as to what had transpired between him and the appellant, who asked the complainant to take appropriate steps. On June 27, 1985, the complainant had gone to meet the appellant, but the appellant was not available and, therefore, the complainant had come back to his place. Thereafter, on June 29, 1985, the complainant had gone to the office of the appellant and pleaded with the appellant to reduce the amount to be given to him for not filing case against the complainant and his brothers. However, the complainant was told by the appellant that he would have to pay an

amount of Rs.100/- and instructed him to come on July 1, 1985 with the amount because according to the appellant, on that day the matter was to be settled and the books seized by him were to be returned.

As the complainant was not inclined to give bribe amount to the appellant, he had gone to Baroda and contacted Police Inspector, Anti-Corruption Bureau. At A.C.B.Office, the complainant had lodged complaint which was registered by Police Inspector Mr.Swami. After recording of complaint was over, P.I. Mr.Swami had instructed the complainant to come to A.C.B.Office at 7.00 A.M. on July 1, 1985 with bribe amount of Rs.100/-, which was to be offered to the appellant. Accordingly, on July 1, 1985, the complainant had gone to the office of A.C.B. at Baroda. At the said office, he was introduced to panchas. In his presence, his complaint was read over to panchas and P.I. Mr.Swami had asked him to produce the amount which was to be offered as bribe to the appellant. Thereupon the complainant had produced currency notes, which were four in number, of the denomination of Rs.20/- each and two currency notes of the denomination of Rs.10/- each. Thereafter, first part of panchnama was prepared at the A.C.B.Office, wherein numbers mentioned on the currency notes, which were produced by the complainant, were recorded. P.I. Mr.Swami had instructed his constable to perform experiment of ultraviolet lamp and explained the properties of the anthracene powder to the panchas as well as the complainant. Therefore, police constable Dilipsinh, who was trained in operating ultraviolet lamp, had brought the lamp and shown the currency notes to the complainant and the panchas under the ultraviolet lamp, but, nothing was found. Thereafter, police constable Dilipsinh had applied anthracene powder on both the sides of currency notes produced by the complainant and the currency notes, which were smeared with anthracene powder, were shown to the complainant and panchas, but, nothing was found by them. However, those notes were shown to the panchas and the complainant under light of ultraviolet lamp, whereupon the notes were emitting blue florescent light. After the experiment with ultraviolet lamp was over, police constable Dilipsinh had put the notes smeared with anthracene powder in pocket of complainant's bushirt and instructed him not to touch those notes till demand was made by the appellant. Police Inspector Mr.Swami had instructed Panch No.1 Bhanubhai Rathva to accompany the complainant and to see as to what was happening and to hear the talk which might take place between the complainant and the appellant and to give signal to the raiding party by placing his hand on the head if the bribe amount was accepted by the appellant.

Thereafter, the drawing of first part of panchnama was completed at A.C.B.Office.

The raiding party had thereafter proceeded in a jeep from Baroda towards Karjan. The members of the raiding party had reached Karjan at about 11.15 A.M. and the jeep was halted at a distance from the office of the appellant. The complainant and panch Bhanubhai Rathva, after getting down from the jeep, had started going towards the office of the appellant; whereas other members of the raiding party including P.I.Mr.Swami were following them. The complainant and panch witness had reached the office of the appellant, but, Kanubhai, who was working as peon at the office of the appellant, had informed the complainant and panch Bhanubhai that the appellant was not present and was likely to come within 30 to 35 minutes. After sometime i.e. at about 12.00 noon the appellant had returned to his office and was followed by two other persons, who had come to meet him. After those two persons had left the chamber of the appellant, the complainant had gone inside the chamber of the appellant followed by the panch witness. The complainant and the panch witness were seated on the chairs opposite the chair of the appellant and the complainant had a talk with the appellant. The appellant had tried to know from the complainant as to whether he had brought money and if he had brought the money, he would finish his work relating to books of the complainant and his brothers which were in his possession and would return the same. Thereupon the complainant had taken out the currency notes which were kept in pocket of his bushirt and handed over the same to the appellant. The appellant had accepted the money and put the same in between the files, which were lying on his table. The complainant had requested the appellant to reduce the amount telling that it was a big amount for them and therefore, the appellant had taken out a currency note of Rs.10/- from the pocket of his pant and given to the complainant. The currency note of Rs.10/- given by the appellant was placed by the complainant in left hand side pocket of his pant. The appellant had also returned books belonging to his brothers to the complainant after making endorsement "seen". Immediately, panch Bhanubhai Rathva had come out of the office of the appellant and placed his hand on his head. On noticing the signal given by the panch witness, members of the raiding party including P.I. Mr.Swami and Police Constable Dilipsinh had rushed into the office of the appellant and instructed the appellant not to move from his place. Thereafter, P.I.Mr.Swami had introduced himself to the appellant and asked the appellant as to where he had put the amount offered by the complainant. The appellant had informed

P.I.Mr.Swami that he had placed the amount offered as bribe to him by the complainant in the record lying on the table. P.I. Mr.Swami had meanwhile asked police constable Dilipsinh to operate ultraviolet lamp. The notes which were kept by the appellant between the files were taken out by panch No.1, and on verification it was found that the numbers on the notes were tallying with the numbers mentioned in the first part of the panchnama. Under the light of the ultraviolet lamp, currency notes were seen and it was found that they were emitting blue whitish florescent light. The currency notes were thereafter seized under a panchnama. So also the books which were handed over by the appellant to the complainant were also seized. Further, under the light of ultraviolet lamp, hands of the accused were seen and it was found that from the fingertips of right hand of the appellant, blue florescent light was emitting. The hands of the complainant were also examined under the light of ultraviolet lamp and it was noticed that fingertips of right hand of the complainant were emitting blue florescent light. After following the other procedure, second part of the panchnama was completed in the office of the appellant. The statements of panch witnesses were recorded and the appellant was interrogated. Over and above the statements of members of the raiding party, statement of Kanubhai, who was peon at the office of the appellant, was also recorded. On completion of investigation, P.I. Mr.Swami had sent papers to the Director of A.C.B. for obtaining sanction to prosecute the appellant. Sanction to prosecute was obtained and Mr.Swami had lodged case against the appellant before the learned Special Judge, which was registered as Special Case No.9 of 1986.

3. The learned Special Judge had framed charge against the appellant at Exh.8 of the offences punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 161 of the Indian Penal Code. The charge was read over and explained to the appellant who had pleaded not guilty to the same and claimed to be tried. Therefore, in order to prove its case against the appellant, the prosecution had examined (i) complainant Vinubhai Dhanjibhai Patel, PW.1 at Exh.11, (ii) panch witness Bhanubhai Mathurbhai Rathva, PW.2 at Exh.18, (iii) P.S.I. Mr.Narhari Ravjibhai Patel, PW.3 at Exh.24, (iv) peon, who was discharging duties at the office of the appellant i.e. Kanubhai Chunibhai Harijan, PW.4 at Exh.25, and (v) P.I. of A.C.B.Baroda Mr.Rambharti Kalubharti Swami, PW.5 at Exh.26. The prosecution had also produced documentary evidence, such as, notice issued by the appellant to the complainant under the provisions

of the Minimum Wages Act at Exh.12, notice issued by the appellant to Mohanbhai, who was brother of the complainant, at Exh.13, notice issued by the appellant to Nagjibhai, who was brother of the complainant at Exh.14, notice issued by the appellant to Kantibhai, who was brother of the complainant at Exh.15, receipt indicating that the books which were produced by the complainant and his brothers were retained by the appellant at Exh.16, complaint of Vinubhai which was lodged at the office of A.C.B.Baroda at Exh.17, muddamal receipts at Exhs.19 & 20, panchnama partly drawn at the office of A.C.B. Baroda and partly drawn at the office of the appellant at Exh.21, the sanction to prosecute the appellant at Exh.23 etc. in support of its case against the appellant.

4. After recording of evidence of the prosecution witnesses was over, the learned Judge had explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the case of the appellant was that when he had gone to attend some work in the Bank, someone must have placed the amount of bribe in his absence, but he had not accepted the bribe amount. However, he had neither examined himself on oath nor any witness to substantiate the defence pleaded by him in his further statement.

5. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved beyond reasonable doubt that the appellant was a public servant discharging duties as Assistant Labour Officer. According to the learned Judge, sanction to prosecute the appellant produced by the prosecution was legal and valid. The learned Judge noticed that testimony of complainant Vinubhai Patel was inspiring confidence and though it is not the requirement of law that his testimony should be corroborated by other evidence in material particulars, his evidence was corroborated by the evidence of panch witness Bhanubhai as well as that of P.I. Mr.Swami. It was deduced by the learned Judge that it was proved by the prosecution beyond reasonable doubt that the appellant had demanded bribe amount of Rs.100/- from the complainant and pursuant to the said demand, the complainant had given the amount to the appellant, which was recovered from the place where the appellant had put. It was also noticed by the learned Judge that the fingertips of right hand of the appellant were found to be emitting blue florescent light and the circumstances brought on record proved that the appellant had accepted an amount of Rs.100/- by way of bribe from the complainant on July 1, 1985. According to

the learned Judge, theory of planting of bribe amount, which was advanced by the appellant, was not acceptable. In view of these findings, the learned Judge has convicted the appellant of the offences punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 as well as Section 161 of the Indian Penal Code and imposed sentence referred to earlier by judgment dated March 2, 1991, giving rise to instant appeal.

6. After taking the Court through the entire evidence on record, Mr.M.J.Budhbhatti, learned counsel of the appellant, contended that the evidence on record shows that the complainant was handed over his books of account by the appellant on June 19, 1987 and as there was no motive for the complainant to give bribe amount to the appellant, the prosecution story, as propounded, was highly improbable and the conviction of the appellant should be set aside. What was maintained by the learned counsel of the appellant was that the evidence of the complainant indicates that he was an accomplice i.e. a willing bribe giver and as his evidence is not corroborated by the other evidence on record in all material particulars, the appeal should be accepted. It was stressed by the learned counsel of the appellant that there is no evidence on record which establishes that the appellant had, in first instance, demanded any amount of bribe from the complainant and in absence of proof of demand, conviction of the appellant should be set aside. Elaborating the said contention it was pointed out that the evidence clearly establishes that after the complainant and his brothers were informed by the appellant that a case was required to be filed for improper maintenance of books, the complainant and his brothers had come out of the office of the appellant and after sometime, the complainant had again gone into the office of the appellant and asked him to find a way out, which shows that there was no demand of illegal gratification by the appellant and, therefore, conviction of the appellant recorded by the trial Court should be regarded as erroneous and illegal. It was contended that the evidence of P.I. Mr.Swami read with that of panch witness Mr.Bhanubhai Rathva would show that P.I. Mr.Swami had gone to the office of Deputy Collector and requisitioned services of selected persons to act as panch witnesses, which makes the prosecution case highly doubtful and, therefore, the judgment impugned in the appeal should be set aside. According to the learned counsel of the appellant, evidence of the complainant as well as that of panch witness establishes that the appellant would not have been inclined to accept amount of

bribe in presence of two unknown persons and, therefore, the appellant would not have accepted the amount of bribe in presence of panch witness, who was not known to him, as a result of which the case of the prosecution that the appellant had demanded amount of bribe and accepted the same from the complainant becomes highly doubtful. It was pointed out to the Court that ten rupee currency note, which was seized from the complainant, was not found to be smeared with anthracene powder, which makes the case of the prosecution untrustworthy and, therefore, conviction of the appellant should be set aside. According to the learned counsel of the appellant, totality of the circumstances does not establish demand and acceptance of bribe amount by the appellant, or recovery of the said amount from the appellant and, therefore, the appeal should be allowed. The learned counsel emphasised that the evidence on record has not been appreciated in its true perspective by the learned Judge of the trial Court and, therefore, the appeal should be accepted.

7. Mr.N.D.Gohil, learned Additional Public Prosecutor, argued that the testimony of the complainant shows that pursuant to notices issued by the appellant, he with his brothers had attended the office of the appellant where the appellant had informed the complainant that the case was required to be filed against the complainant and others for improper maintenance of books of account, as a result of which the complainant had requested the appellant to find a way out and the way out suggested by the appellant was to give bribe amount and as this part of the prosecution case is trustworthy, it cannot be said that any error was committed by the learned Judge of the trial Court in acting upon the same. According to the learned counsel of the State Government, the complainant cannot be regarded as an accomplice and, therefore, the Court should not insist for corroboration to his testimony. In the alternative, it was pleaded that the sworn testimony of the complainant gets full corroboration from the evidence of panch witness Bhanubhai, witness Narharibhai Patel, witness Kanubhai Harijan and P.I. Mr.Swami in material particulars and, therefore, well-founded conviction of the appellant should not be regarded as erroneous by this Court. It was asserted that the evidence of the complainant read with that of panch witness Bhanubhai establishes beyond reasonable doubt that on July 1, 1985, the appellant had demanded bribe amount of Rs.100/- from the complainant, which was given by the complainant to the appellant and accepted by the appellant, which was later on recovered from the files lying on the table of the appellant and as fingertips of right hand of the appellant were emitting blue florescent

light under ultraviolet lamp, it was proved by the prosecution that the appellant had accepted bribe amount. What was maintained by the learned counsel was that the appellant could not probablise his defence that the bribe amount was planted by someone when he was out of his office to attend some work in Bank and, therefore, the appeal should be dismissed. In support of these submissions, the learned counsel has placed reliance on the decisions in (i) Dalpatsingh and another vs. State of Rajasthan, AIR 1969 SC 17, (ii) Hazari Lal vs. The State (Delhi Admn.), AIR 1980 SC 873, (iii) Ramesh Kumar Gupta vs. State of M.P. AIR 1995 SC 2121, and (iv) State of U.P. vs. Zakaullah, AIR 1998 SC 1474.

8. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. The fact that the appellant was a public servant in the year 1985 and was discharging duties as Assistant Labour Officer at Karjan is not in dispute. The appellant, in his further statement recorded under Section 313 of the Code of Criminal Procedure, has also admitted that between June 24, 1985 to July 1, 1985 he was discharging duties as Assistant Labour Officer in Labour Department of the State of Gujarat and was a public servant. The finding that the appellant was a public servant is eminently just and is hereby confirmed. Similarly, the finding recorded by the learned Judge that sanction to prosecute the appellant produced on record of the case at Exh.23 is legal and valid, is not subject matter of challenge in instant appeal. It may be stated that it was not claimed by the appellant in his further statement that the sanction to prosecute produced by the prosecution was not valid nor any prosecution witness was cross-examined with reference to legality, or otherwise, of sanction to prosecute. As noticed earlier, sanction to prosecute the appellant is produced on record of the case at Exh.23. A bare reading of the same makes it more than clear that before according sanction to prosecute the appellant, all the relevant facts were taken into consideration by the sanctioning authority and after application of mind sanction to prosecute the appellant was granted. The sanction to prosecute the appellant is a reasoned order and shows that the sanctioning authority had taken into consideration the documents forming part of papers of C.R.No.28/85 registered with A.C.B. Baroda. On overall view of the matter, this Court is satisfied that sanction to prosecute the appellant is valid and no infirmity in the said order could be pointed out by the learned counsel of the appellant.

9. The point which falls for consideration of the Court is whether the appellant had demanded the amount of Rs.100/- as bribe from the complainant and accepted the same. Complainant Vinubhai Patel has been examined in the case as PW.1 at Exh.11. He has stated before the Court that he has three brothers and that all were tilling lands situated at village Karjan. According to him, all the brothers had received notices from the appellant calling upon them to remain present in his Office on June 17, 1985 at about 12.00 noon with books of accounts. The notices which were received by him and his brothers are produced by him at Exhs.12 to 15. According to the complainant, in response to the notice issued by the appellant, he, in the company of his brothers, had attended the Office of the appellant and produced books of accounts before the appellant, but the appellant had asked him and his brothers to come on June 24, 1985, as according to the appellant, it was necessary to check the books brought by the complainant. The complainant has further mentioned in his testimony that on June 24, 1985, he in the company of his brothers had gone to the office of the appellant and the appellant had told him that there were irregularities in maintaining the books and, therefore, a case was required to be filed against them. What was maintained by the witness before the Court was that in view of the stand of the appellant, he and his brothers had come out of the office and he again had gone inside the office of the appellant and asked the appellant to find a way out. It was asserted by the witness before the Court that the appellant had demanded a sum of Rs.100/- from him to avoid filing of case. According to this witness, he had gone to the office of the appellant on June 27, 1985, but the appellant was not available in his office and, therefore, he had to come back. It is further stated by the witness that on June 29, 1985, he had met the appellant and asked him to reduce the amount of bribe, as the said amount was too huge for them, but the appellant had told him in no uncertain terms that an amount of Rs.100/- would have to be paid and asked him to come to his office on July 1, 1985 to pay the amount and collect books from him. The witness has informed the Court that he was not inclined to give amount of bribe demanded by the appellant and had, therefore, lodged complaint with A.C.B. Baroda. The witness has stated that his complaint was registered by P.I. Mr.Swami, who had instructed him to come to his office on July 1, 1985. The witness has mentioned in detail as to what had transpired in A.C.B.Office on July 1, 1985 and how experiment with ultraviolet lamp was carried out. According to this witness, after drawing of first part of panchnama was over, he in the company of the

raiding party had gone to the Office of the appellant and had offered amount of bribe to the appellant which was accepted and which was later on recovered from the files lying on the table of the appellant. In cross-examination, the witness has stated that his books were verified on June 17, 1985 and that on June 24, 1985 his books were not to be inspected, but the books belonging to his brothers were to be inspected. It was also admitted by the witness that he had not stated in his complaint as to at which time on June 24, 1985 he was asked by the appellant to remain present in his office. However, the suggestion made to the witness that his books of accounts were handed over to him on June 17, 1985 and, therefore, no amount of bribe was to be paid to the appellant, was emphatically denied by him. It was further stated by this witness in his cross-examination that before July 1, 1985 he was not knowing panch witnesses and that he had occasion to know P.I. Mr. Swami only on June 29, 1985 when he had gone to lodge complaint with Mr.Swami. The suggestion made by the defence that P.I. Mr.Swami had introduced him to panch witnesses on June 29, 1985 was denied by him. It was admitted by him that he was not knowing the properties of anthracene powder. The suggestion put to the witness that the appellant had not placed the bribe amount in the files lying on the table was also specifically denied by him. Further, it was stated by this witness that he had not pointed out to P.I.Mr.Swami the place where the appellant had kept the bribe amount, and it was maintained by him that the said place was pointed out to P.I. Mr.Swami by panch witness Mr.Bhanubhai Rathva. On reappreciation of evidence of this witness, the Court finds that the assertions made by the complainant stand corroborated by the contents of (i) complaint produced at Exh.17, and (ii) panchnama produced at Exh.21 on record of the case. Though this witness was searchingly cross-examined at length, nothing could be brought on record so as to doubt his version which was given by him in his examination-in-chief. It is worth nothing that before receipt of notice, the complainant had no occasion worth the name to meet the appellant. It could not be remotely suggested to the complainant that he had any enmity with the appellant. A bare reading of testimony of the complainant makes it clear that he has narrated the facts in natural manner. There are no major contradictions or omissions appearing in his evidence with reference to complaint which was lodged by him on June 29, 1985, or with reference to contents of contemporary record produced by the prosecution in the form of panchnama at Exh.21. Therefore, his testimony inspires confidence of this Court and no error was committed by the learned Judge of the trial Court in acting upon his testimony.

10. The assertion of the complainant that he had made payment of bribe amount to the appellant on demand being made, gets ample corroboration from the testimony of panch Bhanubhai Rathva. The evidence of witness Bhanubhai recorded at Exh.18 would show that at the relevant time he was serving as clerk in the office of the Collector, Baroda and had agreed to act as one of the panch witnesses at the instance of Deputy Collector. This witness has also stated, in detail, as to what had transpired at the A.C.B.Office when the complainant had produced the amount to be given as bribe to the appellant and which tests were carried out. Further, he has, in detail, mentioned as to how the amount was demanded by the appellant and how the same was accepted by the appellant. As he has completely corroborated the complainant, it is not necessary to reproduce here what was stated by him in his examination-in-chief. Suffice it to say that the panch witness has fully supported the case of the complainant. In his cross-examination, a suggestion was put to him that his superior i.e. Deputy Collector had told him on June 29, 1985 to go with P.I. Mr.Swami as one of the panch witnesses, but this suggestion was assertively denied by him. He had also denied the suggestion that P.I. Mr.Swami had sent a Car to bring him to A.C.B.Office. The suggestion that the complaint lodged by the complainant was not read over to him at A.C.B.Office was also denied by him. It was asserted by him that it was read over to him and that he had also signed the complaint lodged by the complainant. It was admitted by him that he was not knowing as to what were the properties of anthracene powder and whether a thing smeared with anthracene powder would emit blue florescent light. It was asserted by him in his cross-examination that P.I. Mr.Swami had instructed him to give signal by placing his hand on head after the bribe amount was accepted by the appellant. Further, the suggestion made by the defence that Rs.100/- were taken out by the complainant from the table of the appellant was also denied by him. So also, the case pleaded by the defence that he was a panch selected by P.I. Mr.Swami and, therefore, was deposing falsely against the appellant was emphatically denied by him. Thus, the evidence of witness Bhanubhai would also show that in fact he had witnessed that the amount of bribe was demanded by the appellant and the same was accepted by the appellant when it was offered by the complainant. At this stage, it may be observed that the testimony of panch witness Bhanubhai stands completely corroborated by contemporary document viz. contents of panchnama. Though this witness was also searchingly cross-examined at length, no major contradictions or omissions could be

brought on record with reference to the contents of the panchnama. The witness could withstand the test of cross-examination. Further, his evidence also gets corroboration from the evidence of Rambhati Kalubhati Swami Exh.26, who was then P.I. A.C.B. Baroda. It is not necessary to reproduce the evidence of P.I. Mr.Swami in the judgment because the same has been discussed in detail by the learned Judge of the trial Court in the impugned judgment. Suffice it to say that P.I. Mr.Swami has also supported the testimony of complainant Vinubhai Patel and that of panch witness Bhanubhai Rathva. The claim of the complainant and panch witness that on July 1, 1985 the appellant was not present and had returned to his office after sometime, gets complete corroboration from the testimony of witness Kanubhai Chunibhai Harijan Exh.25, who was then discharging duties as peon in the office of the appellant. Thus, the conclusions drawn by the learned Judge of the trial Court, which are to be found in Paragraph 28 of the impugned judgment, cannot be regarded as erroneous or illegal.

11. The plea that the complainant was given his books of accounts on June 17, 1985 and, therefore, he had no reason or motive to give bribe amount to the appellant, has no merits. If one reads the testimony of the complainant carefully, it becomes evident that the appellant had demanded Rs.25/- for each of the four brothers. The receipt dated June 24, 1985 would indicate that the appellant had retained or seized the books of accounts produced by Dhanjibhai Bhaijibhai Patel and Nagjibhai Dhanjibhai Patel for further scrutiny. The receipt issued by the appellant is produced by the prosecution at Exh.16. The case of the complainant that he had a talk with his brothers and that his brothers had told him to take appropriate action in the matter to avoid filing of case could not be demonstrated to be false or untrue. Thus, though the complainant himself was handed over his books of accounts on June 17, 1985, books of brothers of the complainant were retained by the appellant and, therefore, the case of the complainant that the appellant had demanded Rs.100/- from the complainant inspires confidence of the Court.

12. The plea that the complainant was an accomplice in the sense that he was a willing-bribe-giver and as his evidence is not corroborated in material particulars, the appeal should be accepted, is devoid of merits. It is doubtful whether the complainant, in this case, can be branded as an accomplice. He had merely gone to the office of the appellant and requested him to find a way out. The evidence does not show that he was inclined to

give bribe to the appellant nor does it indicate that it was desire of the complainant that the appellant should accept the bribe and decide not to file case against the complainant and others. When the complainant had requested the appellant to find a way out, the appellant had demanded bribe amount. Under the circumstances, it is difficult to agree with the submission made by the learned counsel of the appellant that the complainant was a willing-bribe-giver and, therefore, an accomplice. However, even if it is assumed for the sake of argument that the complainant was a willing-bribe-giver, that fact by itself would not make his case doubtful and only thing which is required to be done is that his evidence should be subjected to close scrutiny, and the Court may insist for corroboration from other evidence in material particulars. As noted above, testimony of the complainant stands completely corroborated by the testimony of panch witness Mr.Rathva as well as that of P.I. Mr.Swami and two other witnesses who have been examined in the case. Under the circumstances, no benefit can be given to the appellant on the basis that testimony of the complainant, who is an accomplice, does not get corroboration from any independent evidence in material particulars. The plea that the amount was not demanded by the appellant from the complainant on July 1, 1985 and, therefore, the prosecution case should be disbelieved is merely stated to be rejected. As held earlier, the complainant has clearly stated that on July 1, 1985, the appellant had demanded the amount and on demand being made, he had handed over the same to the appellant. This case of the complainant gets corroboration from the testimony of panch witness. It may be stated that it could not be pointed out by the defence that panch Mr.Rathva had earlier acted as panch witness in any other trap case. As is evident, panch Mr.Rathwa was not knowing as to what were properties of anthracene powder and how ultraviolet lamp was operating. In fact, he had acted as one of the panch witnesses on being asked by his superior officer. He had no opportunity of either meeting the complainant or P.I. Mr.Swami before July 1, 1985. Therefore, it is wrong to say that he was specifically selected as panch witness by P.I. Mr.Swami. The evidence of panch witness further shows that for the first time he had met the complainant in the office of A.C.B. on July 1, 1985. The record does not show that prior to July 1, 1985, panch witness had any opportunity of knowing the complainant. The complainant and the appellant are of different castes and it is not the case of any one that the panch witness had a special interest in the complainant or was ill-disposed towards the appellant. In fact, he had no grudge against the appellant and he has narrated the incident in a most

natural manner without exaggerating or overstating prosecution case. Therefore, the learned Judge of the trial Court did not commit any error in placing reliance on the sworn testimony of panch witness. This trustworthy testimony of panch witness also establishes that the appellant had demanded bribe money from the complainant and accepted the same.

13. The plea that the appellant would not accept the amount of bribe in presence of panch witness who was unknown to him, has also no substance. The evidence of the complainant would show that the panch witness was sitting by his side opposite the chair of the appellant, but,the appellant had not made any inquiry with the complainant as to who was accompanying him. On the earlier occasion, the complainant had visited the office of the appellant in the company of his three brothers and, therefore, when the complainant was accompanied by one person on July 1, 1985, the appellant had no reason to suspect that the person, who was accompanying the complainant, was instructed to act as one of the panch witnesses. Further, pursuant to the talk which had taken place between the appellant and the complainant prior to July 1, 1985, the complainant had gone to the office of the appellant. The appellant had not demanded the amount of bribe for the first time on July 1, 1985, but the demand was already made by him earlier. Under the circumstances, acceptance of the bribe amount from the complainant in presence of panch witness, does not create any doubt about the prosecution case, nor does the said fact affect the veracity of the witnesses examined in the case. On overall review of the evidence on record and totality of the circumstances, this Court is satisfied that it is established by the prosecution that the appellant had demanded and accepted bribe amount from the complainant, which was later on recovered from the files lying on the table of the appellant. The complainant had parted with tainted money and the same came under the hold and control of the appellant. Therefore, it cannot be said that the appellant had not come into possession of money. When once requirement, namely, that the appellant had come into possession of money is satisfied, then only inference is that he had accepted the same and thus, obtained pecuniary advantage within the meaning of Section 5(1)(d) of the Act. At this stage, it is relevant to notice that the defence of the appellant was that somebody had placed the tainted money when he had gone to attend some work in Bank. In a given case, the amount may be planted if there is enmity or other good reason. The record does not show that either the complainant, or the panch witness, or for that purpose even P.I. Mr.Swami

were ill-disposed towards the appellant. The complainant had opportunity to meet the appellant only when notices were served on him and his brothers; whereas panch witness and P.I. Mr.Swami had opportunity of meeting the appellant only on July 1, 1985. Under the circumstances, neither the complainant nor the panch witness nor P.I. Mr.Swami had any reason to plant money and falsely involve the appellant in such a serious case. The theory advanced by the appellant in his further statement to the effect that the currency notes, which were seized from him, were planted could not be probablised by him. Moreover, reliable, cogent and consistent testimony of the complinant would show that after raid, hands of the appellant were examined under ultraviolet lamp and that fingertips of right hand of the appellant were emitting blue florescent light. This fact is also mentioned by panch witness and P.I.Mr.Swami in their respective testimony. This incriminating circumstance is also mentioned in the panchnama which is a contemporary document prepared at the time of raid. Though this incriminating circumstance was put to the appellant while recording his further statement under Section 313 of the Code, no explanation could be offered by him as to how blue florescent light was emitting when fingertips of his right hand were examined under ultraviolet lamp. Find of anthracene powder on the fingertips of right hand of the appellant also lends corroboration to the testimony of the complainant and others that the appellant had accepted bribe amount from the complainant. Having regard to the facts of the case as emerging from the evidence of five witnesses examined by prosecution, this Court is of the firm opinion that conviction of the appellant cannot be regarded as illegal and is not liable to be set aside. Under the circumstances, instant appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

At this stage, the learned counsel of the appellant prays that time of eight weeks be granted to the appellant so as to enable him to approach higher forum. The record of the case shows that the appellant was released on bail vide order dated March 25, 1991 while admitting his appeal. Having regard to the facts of the case, prayer made by the learned counsel of the appellant is accepted. Time of eight weeks is granted to the appellant to surrender to the authorities.

(J.M.Panchal,J.)